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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 393

THE UNITED STATES

v.

ARTHUR PELZER

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR RESPONDENT.

ROBERT A. LITTLETON,
1021 Tower Building,
Washington, D. C.

Of Counsel:
MASON, SPALDING & MCATEE,
Washington, D. C.

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OPINION BELOW.

The opinion of the Court of Claims (R. pp. 19-26) is reported in 31 Fed. Supp. 770.

JURISDICTION

The judgment of the Court of Claims was entered June 3, 1940 (R. p. 28). The jurisdiction of this Court is invoked under Section 3(b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

STATUTES AND REGULATIONS INVOLVED

The appendix to brief of the United States correctly states the statutes and regulations involved and we shall not repeat them in our brief.

STATEMENT

The brief of the United States contains a fair statement of the facts involved, with the exception that it says the gifts involved "were made to the trusts", which of course is not true; and with such correction we will not burden our brief with a restatement of the facts.

QUESTIONS PRESENTED

The first question presented is:

(a) Whether eight $5,000 exclusions shall be available during each of the calendar years 1932 to 1935, inclusive, in the case of gifts by the donor to his eight living grandchildren, and

(b) Whether four $5,000 exclusions shall be available during each of the calendar years 1934 and 1935 in the case of gifts by the donor to his wife and three daughters.

The second question presented is:

Whether the gifts to the eight living grandchildren is a present or future interest in property.

SUMMARY OF ARGUMENT

The United States takes the position that where a donor makes gifts to two or more individuals of an economical interest in property, and the gifts are consummated by a transfer of property in trust; that the trust created by the donor is the "donee" of the gifts.

In construing the provisions of Section 504(b) of the Revenue Act of 1932, the Courts have generally held that

term "any person" to whom gifts are made during the endar year means the "individual" whom the donor mes as the object of his bounty, and not the trust created the purpose of consummating the gifts to such individual of an economical interest in property. (See *Welch Davidson,* 102 Fed. (2d) 100; *Rheinstrom* v. *Commissioner,* 105 Fed. (2d) 642; *Robertson* v. *Nee,* 105 Fed. (2d) 7; *McBrier* v. *Commissioner,* 108 Fed. (2d) 967; *Hutchgs* v. *Commissioner,* 111 Fed. (2d) 229; and *Early* v. *Reid,* 2 Fed. (2d) 718.)

The only exception to the rule of construction established the above cases is the cast of *United States* v. *Ryerson,* 4 Fed. (2d) 150, which holds that where gifts to two or ore individuals are made by the transfer of property in ist, the trust created by the donor is the "donee" of the fts of an economical interest in property. Such a rule pears to be out of harmony with the purpose of the atute imposing a gift tax. Such a rule is also out of rmony with the statutory law of Alabama, the domicile the donor and donees and the situs of the property inlved in the gifts. (See Sections 6912 and 6913. Code Alabama, 1923 Edition.)

The United States also takes the position that where income from property transferred in trust as a gift or gifts to be accumulated for the use and benefit of a minor nee or donees for a period of ten years, as provided by ction 6914 of the Code of Alabama (1923 Edition), witht an intervening prior estate between the donor and the nee or donees specifically named, the gift or gifts are of future interest in property.

8

ARGUMENT

Number of Exclusions Available

In the case of a transfer of property in trust by an individual with the object of making a gift to each of two or more persons of an economical interest in the property, no gift is completed unless the donor divests himself of full and complete ownership and control of the property transferred and irrevocably names and designates the person or persons to whom the gifts are made (see *Sanford's Estate* v. *Commissioner of Internal Revenue,* 308 U. S. 39, (84 L. Ed 20).

In the above case it is said that,—

> "When the gift tax was enacted Congress was aware that the essence of a transfer is the passage of control over the economical benefits of property rather than any technical changes in its title." (See *Burnet* v. *Guggenheim,* 288 U. S. 280, 77 L. Ed. 748.)

The *Sanford's Estate case, supra,* is authority for the principle that in a case where gifts are made to two or more persons by the transfer of property in trust there must be an irrevocable designation of the "donees" as the persons to whom the gifts are made, and the principle announced in that case was made the basis of the decisions in the following cases involving indirect gifts completed by the transfer of property in trust by the donor, viz: *Rheinstrom* v. *Commissioner,* 105 F. (2d) 642; *Robertson* v. *Nee,* 105 F. (2d) 657; *McBrier* v. *Commissioner,* 108 F. (2d) 967; *Hutchings* v. *Commissioner,* 111 F. (2d) 229; *Early* v. *Reid,* 112 F. (2d) 218; and *Welch* v. *Davidson,* 102 F. (2d) 100.

The United States does not dispute the fact that the gifts involved in this case were completed by an irrevocable designation of donees, and that the donor divested himself of all ownership or control of an economical or beneficial interest in the property transferred in trust.

In the case of *Burnet* v. *Guggenheim,* 288 U. S. 280, 77 L. Ed. 748, it is said that a tax upon gifts is closely related both in structure and in purpose to the tax upon transfers that take effect at death; and in the case of *Sanford's Estate* v. *Commissioner, supra,* it is held that no gift is completed by the transfer of property in trust so long as the "donor" retains the power to change the names of the persons for whose benefit the is created. In the *Guggenheim case, supra,* it is said that the gift tax statute is aimed at transfers of title that have the quality of a gift of an economical interest in property; and when the power to change the name of the beneficiary of the trust is put beyond recall, the gift is completed. (Cf. *Rasquin* v. *Humphreys,* 308 U. S. 54, 84 L. Ed. 77.)

In the case of gifts made by the transfer of property in trust, it is quite evident that the persons for whose benefit the transfer is made are the "donees" of the gifts, where the power to change their designation as such beneficiary is put beyond recall by the donor; and by Section 504(b) of the Revenue Act of 1932 it is provided that in the case of gifts (other than of future interest in property) made to "any person" by the donor during the calendar year the first $5,000 of such gifts shall be excluded from the total amount of the gifts during such year.

The United States appears to concede that if each beneficiary named by the donor is to be regarded as the donee of gifts to each, such individual is intended by the term "any person" when used in Section 504(b) of the Revenue Act of 1932. It appears that the cases of *Sanford's Estate* and *Guggenheim* supra require that a trust must have irrevocable beneficiaries other than the donor, in order to complete a gift by the transfer of property in trust; and where the gift in trust is put beyond the recall of the donor, the beneficiaries ~~named are~~ the donees of the gifts. In the case of *Rasquin* v. *Humphreys,* 308 U. S. 54, 84 L. Ed. 77, it is held that where a trust is irrevocably created, but the donor retains the right to designate new beneficiaries of the trust,

no gift is completed. In the *Humphreys case* the Court says:

> "For the reasons stated in our opinion in the Sanford Case we conclude that the reserved power in the donor at the time of the creation of the trust rendered the gift incomplete and not subject to the gift tax."

Since the irrevocable designation of a beneficiary of the trust is essential to the completion of a gift by the transfer of property in trust, and such beneficiary must be a person other than the donor, it is quite evident that the beneficiary of a trust is the "person" to whom the gift is made. (See *Welch* v. *Davidson, supra.*)

The transfers in trust by the donor to carry out his intent to make gifts of an economical interest in property are controlled by the rules of property applicable to the State of Alabama. Section 6912 of the Code of Alabama (1923 Edition) provides that where real estate, or the income therefrom, is transferred in trust for the use and benefit of a third person, the beneficiary becomes the absolute owner of the property in fee and *no estate or interest vests in the trustee;* and Section 6913 of said Code provides that nothing in Section 6912 shall prevent the conveyance of real or personal property, or the issue, rents and profits thereof, to another *in trust* for the use of the grantor, or his family, or a third person, or for any other lawful purpose; but in such case the *legal title* only shall vest in the trustee.

In order to carry out the intent of Congress when the gift tax was enacted it is not necessary to take into consideration any technical change in title to property. (See *Burnet* v. *Guggenheim*, 288 U. S. 280, 77 L. Ed. 748; *Sanford's Estate* v. *Commissioner*, 308 U. S. 39, 84 L. Ed. 20.)

The provisions of Section 1111 of the Revenue Act of 1932, which provide that "when used in this Act—the term 'person' means an *individual*, a trust or estate, a partnership, or a corporation", should not be given a construction that will defeat the donative intent of the taxpayer in the

case of gifts; and especially so when it is expressly provided that gifts to "any person" of $5,000 or less during any calendar year shall not be subject to tax. The beneficiary of a trust, as the donee of a gift, is an "individual" included in the term "person" when used in the Act; and it appears more sensible to say that the term "any person" when used in Section 504(b) refers to the "individual donee" designated as the beneficiary of the gift rather than the trust which acquires *no economical interest in the property transferred*. (See Section 6913 of the Code of Alabama; 1923 Edition, and *Crook* v. *Harrelson*, 282 U. S. 55, 75 L. Ed. 156.)

We submit that the Court of Claims did not err in allowing one $5,000 exclusion for each beneficiary during each of the years involved.

II

PRESENT AND FUTURE INTEREST IN PROPERTY

The second question presented deals only with the gifts under the "Children's Trust" and is whether or not the gifts to the eight living grandchildren of the donor, who are specifically named, are gifts of a *present interest* in property.

The argument of petitioner that the gifts to the eight living grandchildren of the donor are gifts of a *future interest* in property is based on the fact that the trust instrument provides that for the first ten year period of the life of the trust the income from the property shall be accumulated, invested and reinvested as a *part* of the trust property, and thereafter as each named and living grandchild of the donor attained the age of 21 years "a grandchild's share" of the net income of the trust property should be distributed to him semi-annually, quarterly or monthly during his natural life. (See Section 6914, Alabama Code, 1923 Edition.)

Treasury Regulations 79, Article 11, promulgated under the Revenue Act of 1932, gives the correct definition of a

future interest in property to be "any interest or estate in property, whether vested or contingent, which is limited to commence in use, possession or enjoyment at some future date or time". However, the essential or basic feature of a future interest in property is that it be a vested or contingent *remainder* supported by a prior particular estate of a present interest. (See Sections 6904 and 6905, Code of Alabama, 1923 Edition.) Under the "Children's Trust" the living grandchildren of the donor are the *first persons* who acquire an immediate ceonomical interest in the property after the ownership of the donor ceases by virtue of the gifts. Their economical interest in the property is *vested,* and becomes *presently operative* as a gift to each of them. (See *Doe* v. *Considine,* 73 U. S. 458, 18 L. Ed. 869; *Crawford* v. *Carlisle,* 206 Ala. 379; *Brown* v. *Fletcher,* 235 U. S. 589, 59 L. Ed. 374; and *Blair* v. *Commissioner,* 300 U. S. 5, 81 L. Ed. 465.) The law does not permit the ownership of property to become vacant. (See Section 6912, Code of Alabama, 1923 Edition.)

During the first ten year period of the life of the trust, the net income from the trust property for each of said years is to be invested and reinvested for the *benefit* of the life beneficiaries, and the enjoyment of the economic benefits accruing to them by virtue of the investment and reinvestment of the income in other property in which they have the *present right* to receive the income when they attain the age of 21 years is *realized* by them as completely as it would be if distributed to them in the year earned and expended for the purpose of accumulation as provided in the trust instrument. Even though the life beneficiaries of the trust do not *receive* a distribution of the income while they are minors, they derive money's worth when such income is used to acquire property in which they have an *economical interest.*

Section 6914 of the Code of Alabama (1923 Edition) provides:

"No trust estate for the purpose of accumulation only can have any force or effect for a longer term than ten years, unless for the *benefit* of a minor in *being* at the date of conveyance, or if by will, at the death of the testator; in which case the trust may extend to the termination of such minority".

The accumulation in the case of the estate of the "Children's Trust" for a period of ten years is for the benefit of the minor beneficiaries *in being* at the date of the conveyance and continues until they attain majority; and the conveyance being irrevocable, it becomes presently operative as a gift to each of them of an economical interest in the property.

Moreover, Section 6915 of the Code of Alabama (1923 Edition) provides:

"When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the appropriate Court, upon application, may direct a suitable sum to be applied thereto out of the fund."

The State of Alabama has the power to prescribe the conditions of a trust for the benefit of minors, and expressly provides that they shall immediately possess the right to enjoy the use at any time such use may be needed to satisfy the security of support that it affords to them. There is, therefore, no element of futurity in the gifts involved in the "Children's Trust"; and under the law of Alabama there can be none, notwithstanding the able argument of the Solicitor General to the contrary in the brief for the United States.

In the case of *Helvering* v. *Horst,* decided by the Supreme Court on November 25, 1940, it is said that income from property is enjoyed by a person when there accrues to him an economic benefit by virtue of its use; and that it is realized as completely as it would have been if he had collected the income in dollars and expended them for the

purposes named. (See *Old Colony Trust Company* v. *Commissioner,* 279 U. S. 716; *Corliss* v. *Bowers,* 281 U. S. 376; *Burnet* v. *Wells,* 289 U. S. 670.)

Each of the living grandchildren of the donor acquired a *present* right in the trust property to compel the trustee to observe and strictly comply with the terms of the trust and the laws of the State of Alabama in the administration of the trust property, and they were the only persons who *possessed* or *enjoyed* that right in the property. The investment and reinvestment of the income from the trust property for the period of accumulation was not to be enjoyed or realized by the donor; but it is enjoyed by the life beneficiaries of the trust by virtue of their right to have the income from the property acquired by its use paid over to them when they have reached the age of 21 years. In collecting the income from the trust property for the period of accumulation and investing it, the trustee of the property is acting as the agent of the *cestuis que trusts.*

In the case of *Commissioner* v. *Kreb,* 90 Fed. (2d) 881, the Court said:

> "We are further of the opinion that tested by the nature of the gifts to the cestuis que trusts, the donor was entitled to the deduction. The donees were named, the respective values of the gifts to them were ascertainable, and they were given the use of the income and of the unexpended accumulated income without an intervening estate, *even though physical possession was postponed.*"

In the *Horst case, supra,* it is said that the right to control the use of property is synonymous with its actual use and enjoyment. The trust instrument certainly vests in the life beneficiaries the present right to demand of the trustee that the trust property be used for the purposes expressed, and for their benefit, subject only to the exercise of discretion by the trustee in making sound investments of the income for the period of accumulation. There is no likelihood that the trustee will violate any of the provisions

of the trust agreement, but its fidelity is under the control of the life beneficiaries which control they enjoy by virtue of the gifts to them from the earliest moment of time that the gifts were completed and became operative by the transfer of property in trust for their benefit by the donor. The right of the life beneficiaries to demand of the trustee a faithful execution of the trust agreement, and to use the property for their benefit as provided by law is not limited to commence in use or enjoyment at some future date or time.

In the case of a future interest or estate in property, limited to commence in use at some future time or date, there is always a prior estate of present operation; and in this case it is clear that the life beneficiaries named by the donor are vested with a present economical interest in the property. (See *Sanford's Estate case, supra.*)

The receipt of cash is not the only characteristic of the enjoyment of a present economical interest in property. The ownership of such an interest is to be enjoyed by the donees from the first moment of time that it is irrevocably fixed by a completed gift; and the expenditure of the income from the property to procure other property in which the donees will own an economical interest is a present use of the property by the donees or a use which accrues to their economic benefit. (See *Burnet* v. *Wells, supra.*)

In the case of *Crawford* v. *Carlisle,* 206 Ala. 379 (89 So. 565), it is said that *ownership* of property may not become vacant, and that gifts of property to persons named and living when the gifts are completed are gifts of *present operation* to the persons named.

The brief of the United States speculates on the possibility of the donees of a present interest in property living for such a period of time that the present value of their right to income from the property for life shall equal $5,000; and says that the value of the gifts to them is not susceptible of ascertainment. We think that the statute has taken

care of such a contingency when it provides at Section 506 of the 1932 Act, that:

> "If the gift is made in property, the value thereof at the date of the gift *shall be considered the amount of the gift.*"

Each of the donees acquired a one-eighth share in the value of the property transferred in trust; and inasmuch as the property is appraised as to value, the gift to each was a one-eighth part of such value. The *present value* of the gift to each life beneficiary of the estate, computed upon a different basis than the value of the property transferred, has never heretofore been questioned by the United States; and we submit that the value of the gifts to each of the living beneficiaries is conclusively established by the findings of fact by the Court of Claims of the value of the property transferred in trust. (R. pp. 6 et seq.) The findings of the Court of Claims is also conclusive on the question of the *existence* of each of the donees who acquired a *present interest* in the property at the time of the gifts.

The value of such gifts may subsequently be diminished or it may be *lost entirely;* but such a contingency does not affect the amount of the gifts in the computation of the gift tax, nor does such a contingency affect the exclusion of the first $5,000 value of the gifts made by the donor during each of the calendar years involved.

Section 501 et seq of the Gift Tax Title of the Revenue Act of 1932 does not take into consideration the fact that the completed gift of a *present interest* in property to specifically named persons may subsequently be divested by their death, so as to ripen a remainder or *future interest.* Section 504(b) merely provides that the exclusion of the first $5,000 of the gifts made by the donor is applicable only to the donee who acquires a *present interest* in the property by the gift, and not to the donee who acquires a *future interest.* The exclusion of the first $5,000 of the

gift is a gratuity granted the donor, and should not be whittled away by refined argument.

Much of the brief for the United States is devoted to an academic discussion of matters not material to the two simple questions presented by the assignments of error.

CONCLUSION

The petitioner's brief admits there have been acts of "inconsistency" and "immoderation" on the part of *officials* of the Bureau of Internal Revenue in the administration of the Gift Tax Title of the Revenue Law of 1932, and because of such inconsistencies there is reasonable grounds for taxpayers becoming confused in submitting returns of gifts made; but notwithstanding the presence of such confusion the facts as found by the Court of Claims in this case are ample and adequate for a clear-cut decision of the two questions presented. (See *United States* v. *Wells,* 283 U. S. 102, 75 L. Ed. 867.) Any duplication of the allowable exclusions, which may have resulted from the inconsistent acts of officials of the Bureau should not influence a proper construction of the statute involved.

Respectfully,

ROBERT A. LITTLETON,
1021 Tower Building,
Washington, D. C.
Attorney for Respondent.

Of Counsel:
MASON, SPALDING & MCATEE,
Washington, D. C.

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SUPREME COURT OF THE UNITED STATES.

No. 393.—OCTOBER TERM, 1940.

The United States, Petitioner, *vs.* Arthur Pelzer.	On Writ of Certiorari to the Court of Claims.

[March 3, 1941.]

Mr. Justice STONE delivered the opinion of the Court.

Decision in this case turns on the question whether certain gifts of property in trust for the benefit of several beneficiaries are gifts of "future interests" which, in the computation of the gift tax, are, by § 504(b) of the 1932 Revenue Act, 47 Stat. 169, 247, denied the benefit, otherwise allowed, of exclusion from the computation to the extent of the first $5,000 of each gift "made to any person by the donor" during the calendar year.

Sections 501(a) and 502(1) of the 1932 Act impose for each calendar year a tax upon the net amount of transfers "by any individual . . . of property by gift". For the purpose of computing the tax § 504(b) provides "In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first $5,000 of such gifts . . . shall not . . . be included in the total amount of gifts made during such year".

In 1932 the taxpayer, respondent here, created a trust for the benefit of his eight grandchildren and any other grandchildren who might afterward be born during the term of the trust. The trustee was directed to accumulate the income for a period of ten years and thereafter to pay an "equal grandchild's distributive share" of the income to each of the named grandchildren who were then living and twenty-one years of age and to pay a like share of income to each other named grandchild for life after that child should reach the age of twenty-one years. Provision was made whereby grandchildren born after the creation of the trust and during its life were to receive like participation in the income of the trust except as to distributions of income made prior to the birth of such after-born grandchildren, and except that the after-born grandchildren should be paid their shares of the income dur-

ing their respective minorities after the termination of the ten-year accumulation period. The trust instrument also made gifts over of the share of the income of each grandchild at death, the details of which are not now material. It was further provided that the trust should terminate twenty-one years after death of the last survivor of the named grandchildren, when the corpus of the trust, with accumulated income, was to be distributed in equal shares among the surviving grandchildren and the issue *per stirpes* of all deceased grandchildren.

During the years 1933, 1934, and 1935 the taxpayer added further amounts of property to the 1932 trust. In 1934 he also made gifts directly to his three granddaughters and created a trust to pay the income in equal shares to his wife and three daughters with gifts over of each share of the corpus of the trust upon the death of the life tenant.

Upon claims for refunds of overpaid taxes upon the transfers made in the years 1933, 1934, and 1935, the commissioner recomputed the tax and allowed one $5,000 exclusion only from the net amounts subject to gift tax given or added in each year to each trust. In the present suit, brought in the Court of Claims, respondent sought to recover overpaid taxes for the years in question on the grounds that the gifts to the beneficiaries were gifts of present not future interests and that the taxpayer in the computation of the tax for each year was entitled to one exclusion of $5,000 for each beneficiary. The court sustained both contentions and gave judgment for respondent accordingly. 31 Fed. Supp. 770. We granted certiorari October 21, 1940, to resolve the conflict of the decision below with that of the Seventh Circuit in *Ryerson* v. *United States,* 114 F. (2d) 150.

The Government challenges both grounds of decision below. It argues that only a single $5,000 exclusion is allowable under § 504(b) from the total gifts made to the trust in each calendar year and that if the gifts are deemed to be made to the named beneficiaries of the trust no deduction can be allowed in the case of gifts to the 1932 trust because they were of future interests for which no exclusion is allowed by § 504(b).

We have this day decided the first question, in No. 419, *Helvering* v. *Hutchings,* in which we held that in the case of gifts in trust the beneficiaries are the persons to whom the gifts are made and that for purposes of computation of the tax § 504(b) excludes the first $5,000 in value of the gift to each beneficiary from the taxable

amount of the gifts made in the calendar year. For the reasons stated in our opinion in that case we hold that the first beneficiaries of the trusts in this case are the persons to whom the gifts were made and that the taxpayer is entitled to the benefit of the $5,000 exclusion for each gift to such beneficiary if it is not of a future interest.

But the Government argues here, as it did below, that the gifts to the beneficiaries of the 1932 trust are of future interests within the meaning of the statute and treasury regulations. While the eight named grandchildren are the first beneficiaries of the trust, and the persons to whom the gifts were made, none of them takes any benefit from the trust before the end of the ten-year accumulation period or until he is twenty-one, whichever last occurs, and then only if he survives that event. And the question is whether such a gift is a gift of a "future interest" within the meaning of §504(b). Respondent, relying on statutes and judicial decisions of Alabama, where the trust was created and is being administered, insists that the gifts to the named grandchildren are present not future interests as defined by Alabama law. He argues that as § 504(b) does not define the "future interests" gifts of which are excluded from its benefits, they must be taken to be future interests as defined by the local law, and it is the local law definition of future interests which must be adopted in applying the section. But as we have often had occasion to point out, the revenue laws are to be construed in the light of their general purpose to establish a nationwide scheme of taxation uniform in its application. Hence their provisions are not to be taken as subject to state control or limitation unless the language or necessary implication of the section involved makes its application dependent on state law. *Burnet* v. *Harmel*, 287 U. S. 103, 110; *Morgan* v. *Commissioner*, 309 U. S. 78, 81.

We find no such implication in the exclusion of gifts of "future interests" from the benefits given by § 504(b). In the absence of any statutory definition of the phrase we look to the purpose of the statute to ascertain what is intended. It plainly is not concerned with the varying local definitions of property interests or with the local refinements of conveyancing, and there is no reason for supposing that the extent of the granted tax exemption was intended to be given a corresponding variation. Its purpose was rather the protection of the revenue and the appropriate administration of the tax immunity provided by the statute. It is this purpose which

marks the boundaries of the statutory command. The committee reports recommending the legislation declared (H. Rept. No. 708, 72d Cong., 1st Sess., p. 29; S. Rept. No. 665, 72d Cong., 1st Sess., p. 41):

"The term 'future interests in property' refers to any interest or estate, whether vested or contingent, limited to commence in possession or enjoyment at a future date. The exemption being available only in so far as the donees are ascertainable, the denial of the exemption in the case of gifts of future interests is dictated by the apprehended difficulty, in many instances, of determining the number of eventual donees and the values of their respective gifts."

Article XI of Treasury Regulation 79, 1933 and 1936 editions, interpreting § 504(b), declared that "future interests" include any interest or estate "whether vested or contingent, limited to commence in use, possession or enjoyment at some future date or time". This definition stands unchanged in the regulations and while § 504(b) was amended by § 505 of the 1938 Revenue Act so as to withdraw the benefit of the $5,000 exclusion from all gifts in trust the section as amended continues to withhold the benefit of the exclusion from all gifts of "future interests in property".

We think that the regulations, so far as they are applicable to the present gifts, are within the competence of the Treasury in interpreting § 504(b) and effect its purpose as declared by the reports of the Congressional committees, and that the gifts to the eight beneficiaries of the 1932 trust were gifts of future interests which are excluded from the benefits of that section. Here the beneficiaries had no right to the present enjoyment of the corpus or of the income and unless they survive the ten-year period they will never receive any part of either. The "use, possession or enjoyment" of each donee is thus postponed to the happening of a future uncertain event. The gift thus involved the difficulties of determining the "number of eventual donees and the value of their respective gifts" which it was the purpose of the statute to avoid.

We have no occasion to consider the definition of future interests in other aspects than those presented by the present case. The judgment of the Court of ~~Appeals~~ Claims will be reversed so far only as it excluded the gifts to the 1932 trust from the computation of the tax for each of the years in question.

Reversed.